1949.

File No. O. Prim. Edu. Bom. 49

Legal Deptt.

A BRANCH

Subject:— Opinions under the Bombay Primary Education Act, 1928.

P 93
15

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Gen. 104

36-A

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Office of the R.L.A.

Bombay Primary Education Act, 1923. Section 3 & 13(3)

The Datum Line Grants under para 301 of the Code are in the nature of a bounty under section 13 (3) of the Bombay Primary Education Act, 1923 which it would be competent for Government to withhold or totally abolish (see 46 B.L.R. 16). It would be difficult to contend that those Datum Line Grants would be misapplication of the funds within the meaning of section 13(3).

Sd/- P.M. LAD.
5/1

Remembrancer of Legal Affairs.

U.R. to E. & I. D., No. 153, dated the 6th January 1940.

Submitted for signature.

P.S.M.
6/1.

A.L.R. R. K.
6/1

R.L.A.

Issued

Sd/-
6/1/40.

EVI. 7/8.

Office of the R.L.A.

The view taken by Jt. Secretary, E. & I.D., is correct. The District School Board, W.K., would be bound to pay for the time pieces supplied to it in pursuance of the order placed with Genral Stores, ~~Shukla~~. Dhulia.

Sd/- P.M. LAD,
24/1
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 862, dated the 24th Januar 1949.

Submitted for signature.

Id/- 24/1.

A.A.G. Id/- 24/1.

A.L.R. R. K.- 24/1

R.L.A.

KVY. 7/6.

Office of the R.L.A.

Bombay Primary Education Rules. Rule 25(2).

Election of a member in the vacancy caused by his own disqualification.

The words "another representative of the class or body to which the original member belonged" and "the member in whose place he is elected " in rule 25(2) of the Bombay Primary Education Rules made under section 27(1)(c) of the Bombay Primary Education Act, 1923 clearly indicate tat the member disqualified cannot be re-elected in his own vacancy. (Cf. Advocate General's opinion No. 44 dated 15-7-1930 which has been consistently followed by the R.L.A. in his later opinions). Mr. Deshmukh's election is therefore opposed to law.

Sd/- P.M. LAD,
1/3

Remembrancer of Legal Affairs.

U. R. to S. & I. D., No. 2444, dated the 3rd March 1949.

Submitted for signature.

Id/- 1/3.

A.A.S. Id/- 1/3.

R.L.A. R.K.

EVI. 7/6.

Office of the R.L.A.

Convening meetings for congratulating.

Schedule M to P.E. Rules, 1924.

For the reasons stated in paragra h 3 of R.L.A's last opinion No. 10306, dated 4-11-48 it would be difficult to hold that the teachers are prohibited from convening a meeting for the pur ose of congratulating a successful candidate and at any rate rule in Schedule M to the Bombay Primary Education Rules. 2(1)(b) of the Rules imposes no such prohibition.

Sd/- P. M. LAD,

Remembrancer of Legal Affairs.

U.O. to S. & I. D., No. 3496, dated the 4th March 1949.

Submitted for signature

Id/- S/3.

A.A.S. Id/- 3/3.

A.L.S. R.K. 3/3.

R.L.A.

Issued

C.S.P.
4/3.

EVI. 7/6.

Office of the R.L.A.

Bombay Primary Education Act. 1947.

Sections 58 and 62.

2 Para 14 of the suggestions made by Mr. Shah: In absence of any specific provision in the Bombay primary Education Act, 1947, it would be open to the President of the Provincial Board of Primary Education to resign his office qua President by submitting his resignation to the Board and the resignation would take effect when it is accepted by the Board. Elaborate provisions for the President's resignation on the lines of section 4(12)(b) were deemed unnecessary in view of the fact that the Provincial Board fills a minor role in the scheme of the Act and discharges functions which are primarily advisory.

Para 15 of Mr Shah's note:- Sections 62 of Primary Education Act of 1947 is based on section 268 of the Primary Education Act of 1923. Similar provision is also found in municipal Acts e.g. section 300 of the Bombay Municipal Boroughs Act, 1925 and section 167 of the Bombay N District Municipal Act, 1901. While construing a similar provision in the Bombay District Municipal Act Amendment Act (Bom. II of 1884) the High Court held in Nagusha vs. Municipality of Sholapur 18 Bom. 19, that the words "in the case of any such action for damages" in section 48(1) of that Act clearly showed that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable. The section did not contemplate only "suits to recover monetary compensation for a wrongful act". The words "such suit" in section 62(3) of the Primary Education Act of 1947 have reference to any suit against any

school board etc. described in sub-section (1). The word "such" is necessary to avoid repetition of the description of suits mentioned in sub-section (1) and does not create any difficulty in interpreting section 62(2). No amendment of section 62(2) is therefore necessary.

Sd/- P.M.LAD,
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 1121, dated the 29th January 1949.

EVT. 7/6.

Office of the R.L.A.

Bombay Primary Education Act, 1923. Sec. 6(1). Liability of Anand Municipality for payment of arrears.

After the Anand Municipality ceased to be a local authority on 1-8-1933 for the purposes of the Bombay Primary Education Act, 1923, all monies received by it for the purposes of primary education were transferred to the District School Board, Kaira under section 6(1). Consequently the liability of the Anand Municipality for the arrears of pay of Mrs. Trivedi as a result of the Government Memo. No. 5628/II/F, dated 6-8-1938 will have to be met out of the fund, if any, transferred to the District School Board Kaira, under section 6(1). It appears therefore that it would not be possible to enforce the claim against the Anand Municipality. At any rate the claim is clearly time-barred.

Sd/- R P.M. Lad,
24/3
Remembrancer of Legal Affairs.

U. S. to S. & I. D., No. 3256, dated the 25th March 1940.

Submitted for signature.

S.S.
23/3.

A.A.S. Id/-
23/3.

A.L.S. R.K.
24/3.

Issued

C.S.P.
25/3.

EVY. 7/8.

Office of the R.L.A.

Cancellation of Certificates iss:

Under Primary School Certificate Examination Rules.

In the absence of any provision in the Primary School Certificate Examination Rules authorising th cancellation of a certificate once issued it would not be competent for any authority to order such cancellation and the fact that the certificates in the present case are in Educational Inspector's pos session would make no difference in the Legal positi on (cf. section 31(1) of the Bombay University Act, 1928, and section 45 of the Poona University Act, 1948).

d/- P.M. LAD,
14/4
Rem[illegible]r of Legal Affairs.

U. R. to E. I. D., No. 242-Confl., dated 14th April 1949.

Submitted for signature.

Id/- 14/4.

Issued

Id/-
16/4.

EVY. 7/5.

L.D.R.I. 212-Confl.
30-3-49.

Vide p. 181 of correspondence.

The telegram dispatched by the D.P.I. on 6-10-48 to the Administrative Officer, D.S.B. West Khandesh, reads thus:-

"submit immediately information regarding purchase of time-pieces. Withhold payment untill further order".

In his letter No. O-D(Adl) of 17-3-1949, the D.P.I. states that "temporary instructions were issued therein (telegram) to the A.O. to withhold the payment of the Bill of costs of time-pieces pending a decision on the correspondence which was being carried on with the Chairman. The intention of this office was ultimately to take action under sect. 26(c) of the Bom. P.E. Act, etc".

P. 179 Do

The E. & I Dept. holds that as D.P.I's action in asking the A.O. to withhold payment was not in accordance with any provision of the Act, it does not amount to an order under Sec. 160(1) of the Bom. P.E. Act, 1923, and does not, therefore, require modification by Govt. under Sec. 160(3) as contended by the chairman. The R.L.A. is requested to advise whether E & I. Deparment view is correct.

P. 13 ante.

"Seen and returned".

The view at 'A' of E. & I. Deparment Office note is correct".

Id/- 30/3

A.L.R. R.K.- 30/3.

R.L.A. P.M. Ladi - 30/3 EVY. 7/6.

Yor. to E.&I.D. No. 2/6-Confl. dated 2-4-1949.

Office of the G.L.A.

It appears that the old school house at Palghar was constructed by one Mr. Mogare and was handed over to the school Board of the District Local Board, Thana. Neither Government not the District Local Board contributed anything for the construction of the said building. That building was sold by the President, District Local Board, Thana, after obtaining the written sanction of Mr. Mogare and of the Commissioner, N.D., for Rs. 20,000. The amount realised from the sale proceeds of the building is being treated by the District Local Board, Thana, as its own contribution towards the New School building at Palghar which is proposed to be constructed and which is estimated to cost about Rs. 1,35,727. The question raised for G.L.A.'s consideration is whether this amount of Rs. 20,000 which the District Local Board, Thana, proposed to hand over as its contribution towards the cost of the building can be construed as a contribution by a non-Government agency as provided in G.R., E. & I.D., No. S-30, dated 17-12-1947.

2. The Education and Industries Department considers that as the School building belonged to the District Local Board, Thana, the sale proceeds of that building would form part of the primary education fund, and consequently cannot be considered as part of contribution by a non-Government agency. This contention of the Education and Industries Department does not appear to be legally tenable. The distinction tried to be drawn by the E. & I.D. between an Local Board as constitut under the Bombay District Local Boards Act, 1923 and a local authority as constituted under the Bombay Primary Education Act, 1923, does not appear to be material for the purpose of deciding this case. It is admitted that the school building was constructed by Mr. Mogare and handed over to the school Board of the D.L.B. Thana. Further it is also admitted that the school building was sold with the written permission of Mr. Mogare. These

facts are sufficient to warrant an inference that the sale proceeds of the school building are impressed with a trust. It is also informally learnt from the President of the D.L.B. Thanas that Mr. Mogare while giving his permission to the sale of the building stipulated that the amount realised by sale should be devoted for a school. Consequently, the sale proceeds will have to be treated as trust property which will have to be utilised for the purpose of constructing a school building. These sale proceeds could not, therefore, be claimed either by the District Local Board or the District School Board as its own fund. Evidently they would be contributions by a non-Government agency within the meaning of paragraph 3 of Government Resolution, Education and Industries Department, No. 3-50, dated the 17th December 1947.

Sd/- P.M, LAD,
Remembrancer of Legal Affairs.

U. M. to E. & I. D., No. 210-Confl. dated the 30th March 1949.

EVI. 7/8.

CONFIDENTIAL. Office of the D.E.A.

Section 3 E of the Bombay Primary Education Act, 1923, provides that the Provincial Government may on its own motion on the recommendation of the School Board or the local authority for which it has been constituted, supported by a resolution passed by at least two-thirds of the whole number of members of either body, remove any member elected to the School Board, if such member has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties as a member by reasons of any physical or mental infirmity; provided that no person shall be so removed nor shall any resolution recommending the removal of any member be passed unless the member to whom it relates has been given a reasonable opportunity of showing cause why he should not be so removed or why such recommendation should not be made. Section 9 of the Bombay Primary Education, Act, 1947, is in similar terms.

2. On going through the papers, including the material collected by the Committee of the School Board and their report, I do not think it possible to hold that Mr. Jadhav has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct. The material is not sufficient to establish that he compelled the students to take their meals at the boarding house because he had a financial interest therein or that he misappropriated misappropriated or mis-used yarn

or frittered away funds in paying exorbitant rents also because of his interest. There is reason to feel that the evidence in support of the allegations is given in a partisan spirit, and the impression which it leaves is that conduct which may perhaps fall short of a standard of meticulous correctitude is being unduly magnified into misconduct.

3. Besides, Government after giving him opportunity to show cause under section 3 E, have already intimated to him that they propose to take no further action. It would not, therefore, be feasible now to hold him guilty upon the same material.

Sd/- P. M. LAD,

Remembrancer of Legal Affairs.

U. R. to E. & I. D. No. 232-Confl., dated the 8th April 1949.

Submitted after issue.

A note has been taken on R.L.A's opinion No. 5968, dated 25-6-48.

2. File in O. Primary Education/49.

Id/- 17/5.

A.A.S. Id/- 17/5.

EVY. 7/6.

Office of the R.L.A.

Bombay Primary Education Act, 1947. Sections 20 & 24

Bombay Primary Education Rules 1934. Rule 4(2), 41(1)(b)(i)

R.L.A's opinion No. 5682, dated 15-8-46.

In his opinion No. 5682, dated the 15th August 1946, the R. L. A. opined : "There being no provision either in the Bombay Primary Education Act or the rules thereunder expressly vesting in any authority the power to sanction the applications of teachers for retirement from service before superannuation, such power would be deemed to be vested in the school board under rule 4(2)." The Director of Public Instruction does not appear to agree with that opinion of the R.L.A. and observes; "It, however, seems to me that the R.L.A's opinion referred to above cuts at the very root of the generally accepted principle, namely, that the authority which has the power to appoint inherently possesses the power to accept resignations also. If, as held by the R.L.A., the power to accept resignations of teachers vests in the School Board, the Rule 41(1)(b)(i) of the Primary Education Rules will become anomalous among the Primary Education Rules." The R.L.A. is requested to reconsider his previous opinion.

It is no doubt true that under section 16 of the Bombay General Clauses Act, 1904, power to appoint includes power to suspend or dismiss. But this power is subject to a qualification, namely, unless a different intention appears. There are various modes of terminating the contract of service, one of which is the acceptance of resignation. But this mode of terminating contract of service and is different from that of terminating the contract of service by removal or dismissal, which is punitive in nature. There is distinct difference between resignation of service and dismissal from service; for the former amounts to a repudiation of the contract while the latter

would be a refusal to continue the servant on the agreed terms of employment (see Abraham Reuben V. Karachi Municipality, 1937, 113 Indian Cases, 387). It is, therefore, clear that the acceptance of resignation means absolving the servant from his liability to serve which power, being other than power to dismiss, is a residuary power vesting in the School Board. The power to dismiss or discharge a servant from service has to be strictly construed. Under Rule 41 of the Old Bombay Primary Education Rules the Administrative Officer was vested with not only power of appointment but also with power of dismissal or removal for serious misconduct or gross inefficiency. This Rule did not include the power of accepting the resignation of a servant from service. Resignation of a servant from service as stated above implies repudiation of the contract of service and such repudiation may involve a question of claiming damages from the servant for terminating the contract otherwise than as provided in the Rules and also the question of granting or withholding pension to such servant. This power of claiming damages or of granting or withholding pension in case of resignation of service was not given to the Administrative Officer under the old Bombay Primary Education Rules. Consequently, it would not be lawful to construe that power of appointment or dismissal implies power of accepting resignation from service.

Under the new Bombay Primary Education Act, a Staff Selection Committee is constituted and the Administrative Officer is required to make appointment of candidates selected by the Staff Selection Committee in accordance with the directions given by that Committee. Under section 54(1) the Administrative Officer is vested with power to promote, transfer and take all disciplinary action, including removal

or dismissal, against the staff maintained under section —. Under sub-section (2) a person aggrieved by an order of dismissal, removal or reduction or any other order involving disciplinary action made under sub-section (1) may submit an appeal to the Tribunal, etc. It is, therefore, clear that the power which has been expressly given to the Administrative Officer is to take only disciplinary action, including removal or dismissal. The acceptance of resignation of a servant involves no such disciplinary action. Under the New Bombay Primary Education Act, it is thus clear that the Administrative Officer can have no power to accept the resignation of any servant. As stated above, resignation of service involves the question of claiming damages from the servant as well as of withholding his pension if the Rules so warrant. These are substantial powers which cannot be considered as implied in the power of dismissal or discharge from service unless there is an express provision either in the Act or in the Rules.

In these circumstances the S.L.A. sees no reason to reconsider his previous opinion.

Sd/- P. M. LAD.
20/4.
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 4343, dated the 21st April 1949.

Submitted for signature.

S.B.
20/4.

A.A.S. Sd/- 20/4.

Issued

C.S.P.
21/4.

Office of the R.L.A.

Bombay Primary Education Act, 1948.

Under the Bombay Primary Education Act, 1948, there is no time limit for the constitution of the Provincial Board of Primary Education. Moreover it is purely an Advisory Board. Consequently it may be constituted within a reasonable time and in view of the circumstances mentioned by the Director of Public Instruction in his letter dated 21st April 1949, it would not be unreasonable to postpone the constitution of the Board till October next.

Sd/- P.M. LAD,
23/5
Remembrancer of Legal Affairs.

U. R. to E. & I.D., No. 5859, dated the 25th May 194

Submitted for signature.

A.A.S. Id/- 23/5.

A.L.R. Id/- 23/5.

Issued

C.S.P.
25/5.

EVT. 7/6.

Office of the R.L.A.

Constitution of a District School Board.

The Bombay Primary Education Act, 1947.

The question raised for R.L.A's consideration is whether a School Board can be constituted for the Dangs District even though no Local Board has been constituted for that District under the Bombay Local Boards Act, 1923.

2. It is true that under section 3(1) of the Bombay Primary Education Act, 1947, for each District there shall be a District School Board and that "District" as defined in clause (9) of section 2 means a revenue district. But the whole scheme of section 4 clearly shows that no District School Board can be constituted for a District without a District Local Board being first constituted for that District. Other provisionsm of the Act, e.g. section 9, section 14(1), section 41 also support that view. Section 4(8) is not intended to apply to such cases.

Sd/- P.M. LAD,
9/6
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 6429, dated the 11 th June 1949.

Submitted for signature.

Id/- 8/6.

A.A.S. Id/- 8/6.

A.L.R. R.K.
8/6.

Issued R.L.A.

C.S.P.- 11/6. SVY. 7/

Office of the R.L.A.

The Bombay Primary Education Act, 1947. Section 44(1)(e) and 17(1)(d).

The Bombay Primary Education Rules, 1949. Rule 127(2).

Section 44(1)(e) read with section 17(1)(d) of the Bombay Primary Education Act, 1947 clearly implies power of an authorised Municipality to charge fees in Standards V to VII in approved schools and it is not necessary to resort to rule 127(2) of the Bombay Primary Education Rules, 1949 for the purpose.

Sd/- P.M. LAD,
1/7
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 7315, dated the 1st July 1949.

Submitted for signature.

Id/- 30/6.

A.A.S. Id/- 30/6.

A.L.R. R. K. 1/7.

R.L.A.

Issued

C.S.P. 1/7.

EVI. 7/6.

Office of the R.E.A.

Bombay Primary Education Rules, 1949.

Schedule C.

Rules in Schedule C to the Bombay Primary Education Rules, 1949, provide for an appeal only against the rejection and not against the acceptance of a nomination paper. Consequently the only course open to an aggrieved party in the present case would be to seek redress in a Court of Law.

Sd/- P.M. LAD,
20/5

Remembrancer of Legal Affairs.

U.O. R.E. to E. & I. D., No. 5667, dated the 20th May 1949.

Submitted for signature.

S.B.
19/5.

A.A.S. Sd/- 19/5.

Issued

C.S.P.
20/5.

EVT. 7/6.

Office of the R.L.A.

Bombay Primary Education Rules, 1949.

Schedule

Rules in Schedule C to the Bombay Primary Education Rules, 1949, provide for an appeal only against the rejection and not against the acceptance of a nomination paper. Consequently the only course open to an aggrieved party in the present case would be to seek redress in a Court of Law.

Sd/- P.M. LAD,
20/5

Remembrancer of Legal Affairs.

U.R. to E. & I.D., No. 5607, dated the 20th May 1949.

Submitted for signature.

S.B.
19/5.

A.A.G. Sd/- 19/5.

Issued

C.S.P.
20/5.

EVT. 7/6.

Office of the R.L.A.

There is no reason why Government should undertake the defence of the suit on behalf of the School Board. The Board is a body corporate capable to sue and be sued in its own name and the plaintiff is a teacher under the Board and, receives his pay from the Board's Primary Education Fund. It is therefore for the School Board to arrange for the defence of the suit on its behalf. Even as regards the Administrative Officer, the opinion given by the Remembrancer of Legal Affairs in 1939 still holds good and will apply to the present case. It is for the School Board to defend the suit on behalf of both the defendants. At the most the Education and Industries Department might sanction legal assistance for the Administrative Officer in the first instance under rule 189 of the Law Officers Rules and inform the Board in terms of the R.L.A's opinion of 1939.

Sd/- P.M. LAD.
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 4845, dated the 3rd May 1949.

Submitted for signature.

Sd/- 3/5.

Issued C.S.P. 3/5.

EVT. 7/5.

Office of the R.L.A.

Bombay Primary Education Act, 1947.

Section 28. Effect on schemes pending with Government.

The question raised for R.L.A's consideration is whether the compulsory primary education schemes prepared and submitted to Government under the Primary Education Act, 1923, can now be sanctioned by Government or by the Director of Public Instruction to whom the powers of Government under section 28(1) of the Bombay Primary Education Act, 1947, have been delegate

2. Under section 28(2) of the Bombay Primary Education Act, 1947, schemes sanctioned under the Bombay Primary Education Act, 1923, have been saved. But there is no provision in the Bombay Primary Education Act, 1947, providing that compulsory primary education schemes prepared and submitted to Government but not sanctioned before that Act was repealed would be deeme to have been prepared and submitted under the new Act. Further, under the Bombay Primary Education Act, 1923, power to prepare the schemes vested in the local authorities whereas under the Bombay Primary Education Act 1947, such schemes have to be prepared by the Administrative Officer in accordance with the directions received from the Director in this behalf and after obtaining the comments and suggestions of the District School Board upon the scheme so prepared by him, the Administrative Officer has to submit it with such comments and directions, if any, to the Director who shall forward it to the Provincial Government. Consequently, the pending schemes cannot be considered to have been prepared and submitted in accordance with the Bombay Primary Education Act, 1947. It would, therefore, follow that the pending schemes would be considered to have lapsed after the Bombay Primary Education Act, 1923, was repealed. Fresh schemes will have to be prepared and submitted to Government

in accordance with the provisions of the Bombay Primary Education Act, 1947.

Sd/- P. M. LAD,
25/5
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 5862, dated the 25th May 1948.

Issued

C.S.P.
25/5.

EVY. 8/6.

Legal Department.

Sub-section (9) of sec. 4 of the Bombay Primary Education Act, 1947, provides that except as otherwise provided in this Act, the term of office of the members of a school board shall cease on the expiry of the term of the electing district local board or authorised Municipality: Provided that the term of Office of such members shall not be deemed to expire by reason only of the fact that the district local board or authorised Municipality, as the case may be, is dissolved or superseded. The words "except as otherwise provided" refer to contingency provided in sub-sec. (10). In the present case no question of supersession of the electing district local board or authorised Municipality is involved. The words "the term of office of the members" in subsecs. (9) and (11) of sec. 4 also include the members elected by the non-authorised Municipality under proviso to sec. 4(5)(a) of the Act. In the present case it is true that the representatives of the Poona Suburban Municipality which is a non-authorised Municipality, ~~which~~ were elected as members of the Municipal School Board, Poona, under proviso to sec. 4(5)(a) but after once having been elected, their term of office along with that of the remaining members of the S.B. shall cease on the expiry of the term of the electing authorised Municipality under sec. 4(9). The view expressed in the E. & I. D. office note is correct.

Id/- 28/6

I agree reply may be seen and returned

EVY. 8/6 The view taken by E & I.D. is correct

H. E. to E. & I. D., No. 7408, 4/7/R.K. - 29/6

Office of the R.L.A.

Bombay Primary Education Rules, 1949. Rule 4.

It appears that Rule 4 of the Rules in Schedule C to the Bombay Primary Education Rules was amended on 18-6-49. The following two questions are raised with reference to Rule 4 before it was amended; whether the action of the Returning Officer in -

(1) accepting for the seat reserved for representatives of non-authorised municipalities, nomination papers subscribed as proposer and seconder, by members of a D.L.B. and not members of any of the electing non-authorised municipalities, and

(2) rejecting, for the seat reserved for representatives of non-authorised municipalities nomination papers subscribed as proposer and seconder by members of non-authorised municipalities.

was intra vires the Act and rules and, if it was not so, whether the election of representatives of non-authorised municipalities can be held by Government as illegal and a fresh election ordered.

Under Rule 4(1) of the Rules in Schedule C to the Bombay Primary Education Rules, 1949, as it stood before it was amended by Government Notification, E. & I.D., No. 7896, dated 18-6-1949, what was required for a valid nomination was that it should be subscribed by the candidate himself as assenting to the nomination and by two members as proposer and seconder. It was not clear whether the two members who subscribed to the nomination should be members of the non-authorised municipalities who were entitled to elect representatives on the District School Board or the Municipal School Board, as the case may be. "A person who cannot vote cannot nominate, for nomination is the voice or vote of the electors and becomes the election if no other candidates is

nominated."(see R.V. Parkinson, L.R. 3 Q. B.11, Parker's Election Agent and Returning Officer, p. 244). It is therefore evident that the two members who could subscribe the nomination papers should be the members who were entitled to vote for the candidate. The amendment of rule 4(1) merely clarifies and does not alter the legal position. Consequently, the reply to the two questions would be in the negative, that is to say, both the acceptance and rejections of nomination papers were not intra vires the Act and Rules. The aggrieved party should have challenged the nomination at the initial stage of scrutiny of the nomination papers and, if necessary, by an appeal to the Collector under Rule 8 or should have sought relief by a regular suit." The Bombay Primary Education Act and the Rules made thereunder do not empower Government to interfere and set aside the election. Government cannot, therefore, order a re-election in such cases.

Sd/- P.M. LAD,
19/7
Remembrancer of Legal Affairs.

U. R. to E. & I.D., No. 8170, dated 20th July 1949.

submitted for signature.

Id/- 19/7.

A.A.S. Id/- 19/7.

A.L.R. R.K. 19/7.

R.L.A.

Issued.

C.S.P.
20/7.

EVY. 886.

Office of the R.L.A.

• Bombay Primary Education Rules 1924.

Rule 58-A and 58-B.

Transfer is one of the ordinary incidents of a Primary teacher's employment under a district school board and the teacher's disobedience of the order of transfer or his refusal to seve at the place to which he has been transferred would be a valid ground for his dismissal (cf. Alexandre Bonzonron v. The ottoman Bank 1930 124 I.C. 587). The disobedience of a lawful order as in the present case, resulting in dismissal would amount to his refusal to serve and hence a breach of the agreement in form C appended to the Bombay Primary Education Rules, 1924. Consequently, there would be no legal objection to claiming compensation or damage from Mr. Kshirsagar as provided in the agreement in form C. However this amount cannot be deducted from the Provident fund of Mr. Kshirsagar (see section 4(1) and section 6 of the Provident Funds Act, 1925).

Sd/- P.M. LAD.
25/7
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 8426, dated the 26th July 1949.

Submitted for signature.

Id/- 25/7.

A.A.S. Id/- 25/7.

A.L.R. R.K. 25/7.

R.L.A.

Issued C.S.P. 26/7.

EVI. 8/6.

Office of the R.L.A.

Section 35(1) of the Bombay Primary Education Act, 1947, provides that any parent ....., shall, ...-

(i) if he resides in a town or village where there is a magistrate, on conviction by such magistrate; or

(ii) if he resides in a village having a panchayat, on conviction by a village bench; or

(iii) if he resides elsewhere, on conviction by a person empowered in this behalf by the District Magistrate,

be liable to a fine not exceeding two rupees and if such failure continues after such conviction, he shall also on conviction by such magistrate, village bench, or person be liable to a fine of eight annas for every day that the failure continues or is repeated. The words " where there is a magistrate" mean where the magistrate holds his court and not where the magistrate has jurisdiction. The section contemplates that the parent should be tried by a magistrate having his court in the town or village where the parent resides, or by a village bench in the village of his residence, and failing that by a person empowered by the District Magistrate. The word "person" is no doubt wide enough to include even a magistrate; and if we are to consider only the letter of the law, it would be legally feasible for the District Magistrate to empower a Magistrate at the Taluka Headquarters to try parents in whose village or town there is neither a Magistrate nor a village panchayat. However, it seems that the word " person" in sub clause (iii) is used in contradistinction to a

Magistrate as such. That is in accordance with the intention of the section which is that since the offence is of a minor character it would not be desirable to put the parents to the inconveniences of having to go repeatedly to the Taluka Headquarters for trial, and that, therefore, it should be possible for the District Magistrate to empower any person in the village itself for holding such trial. If that be so, the question of amending the Act so as to remove the disability upon Magistrates from trying cases within their jurisdiction does not arise. The proper course would be to empower respectable persons in the village itself or in the neighbourhood for x that purpose.

Sd/- P.M. LAD,
11/6
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 9115, dated the 12,th August, 1946.

Issued
C.S.P.
12/8.
EVY. 8/6.

Office of the R.L.A.

It appears from para 7 of the Director of Public Instruction's letter dated 25-1-1949 that he has issued instructions that new appointments recently made by the School Boards to various posts as a result of the introduction of compulsion should be treated as provisional and subject to the review by the staff Selection Committees when they begin to function after the introduction of the Bombay Primary Education Act, 1947. He has raised the question whether, from the legal point of view, appointments made in advance of the introduction of the new Act can be reviewed by a Statutory Committee to be appointed after the introduction of the new Act. The Joint Secretary, E. & I.D., opines that, as the incumbents have presumbly not been confirmed, he sees no objection to the proposed review. R.L.A. is requested to advise.

Section 23 of the Bombay Primary Education Act, 1947, provides for the appointment of a Staff Selection Committee. Sub-section (5) of that section provides that the School Board or the Authorised Municipality or the Administrative Officer, as the case may be, shall make appointments of the candidates so selected in accordance with the directions given by the Staff Selection Committee. It is therefore clear from this provision that the Staff Selection Committee shall have the power to select candidates for appointment after the new Act comes into force. Appointment may be temporary or permanent. Consequently, if the candidates have been temporarily appointed before the new Act comes in into force, there will be no legal objection to

asking the Staff Selection Committee to review the merits of the candidates before they are confirmed. It, however, appears doubtful whether the instruction issued by the D.P.I. to the School Boards to consider these appointments on a temporary basis is relatable to any statutory provision. Power to appoint certain classess of servants vests in the School Board under Rule 34 of the Bombay Primary Education Rules, 1924, and that power is not subject to the instruction of the D.P.I. The power to appoint ~~him~~ in teachers or inferior servants vests in the Administrative Officer under Rule 41(1), but this power is subject to the general instructions as may be issued from time to time by the Director under sub-rule (2). It would, therefore, follow that the instructions issued by the D.P.I. to make these appointments on a temporary basis would be lawful in so far as they would fall within the ambit of Rule 41(1), that is to say, the appointments made by the Administrative Officer.

The second question raised for the R.L.A's consideration is whether, as soon as a State is merged in the District, the permanent teachers in the State would authomatically become the District School Board teachers.

It is presumed that this question relates to the Primary schools in States which would be completely merged in the Bombay Province after an order is made by the Governor-General under section 290-A of the Government of India Act, 1935. Upon the assumption of adminstration under the Extra Provincial Juridiction Act, the schools managed by the State would vest in the Provincial Government and the staff thereof

will have to be absorbed by Government, Government may consider the relative merits of each teacher and if any teacher is not found to be possessing even the minimum qualification, it would be open to Government to terminate his services in accordance with the General principles made applicable to such cases. Those who are found fit to be absorbed will have presumably be continued in service until the merged area is constituted into a district or included in a district in consequence of the order under section 290-A of the Government of India Act, whereupon they will have to be transferred to the School Board of the district or the area as the case may be; but before so transferring, legislative provision similiar to section 8(1) of the old Primary Education ---- will have to be made.

Sd/- P.M. LAD,
5/4
Remembrancer of Legal Affairs.

U. R. to E. & I. D., No. 3696, dated the 5th April 1949.

Submitted for signature,

Id/- 3/4.

A.A.S. Id/- 5/4.

A.L.R. R.K.
5/4

EVT. 8/6.

The facts are these:-

As the triennium of the D.L.B. Satara, was due to expire on 25-6-49, in exercise of power conferred by section 28 of the Bom. Local Boards Act, 1923, the Comnr. C.D., extended the term of office of the said D.L.B, upto 25-6-1950 (vide Notification No. L.B.D. 1/69 of 19-4-49.

p 289 of B.G.G. 1949, pts. I-A.

As the term of office of the D.L.B. Satara, was extended beyond 31-7-49, it was not affected by the provisions of Cl. (e) of Sub-sec. (5) of sec. 4 of the Bombay Primary Education Act, 1947, and consequently it proceeded to elect a new School Board under the provisions of the said Act. A new school board was accordingly constituted on 18-6-49.

The main contentions urged by the Chairman District School Board, Satara challenging the validity of electing the new school Board are these:-

(1) that there is no provision in the Bombay Primary Education Act, 1947, providing that the D.L.B. Satara, whose term of office has been extended should hold fresh election of the D.S.B. Satara.

(2) that the D.L.B., Satara, had no right to hold election of the D.S.B., Satara, before 27-7-49.

(3) that as office of the D.S.B., Satara, was due to expire on 26-7-49, under Sub-section (9) sec. 4 of the Bombay P.E. Act, fresh elections could not be held by the D.L.B., Satara until it was newly constituted.

(4) This refers to alteration of boundaries with effect from 1-8-49.

Id/-
10/8.

Seen and returned.

The view taken by E. & I. Department on all points raised by/R.A. Patil Chairman, District School Board, Satara is correct.

R.L.K
11/8.

R.L.A. P.M. LAD,
11/8.

U. ~~Rs~~ R to E. & I.D., No. 9116, dated 8

12-8-1949.

EVY. 8/6.

L.D.R.I. No. 13054/49

pp. 1-3 ante

The D.P.I. refers to the provisions of sub-sects. (4) and (5) of sect. 23 of the Bom. Primary Education Act, 1947, and of rule 63 of the Bom. P.E. Rules, 1949, and states that rule 63 provides that while the appointments of Primary School teachers should made by the Administrative Officer, those of the Asstt. Administrative Officers etc. should be made by him on behalf of the District School Board.. In other words, the intention of the rule would seem to be that the A.O. has the power to appoint the candidates ~~xkm~~ selected by the Staff Selection Committee such as Primary School Teachers, such power in respect of the appointment of Asst. Administrative Officer, Supervisors etc. vests in the D.S.B. In para 4 of his letter, the D.P.I. goes on to say "If the view that under sub-sect. (5) of section 23 it is the D.S.B. that has the power to make appointments of the candidates selected by the Staff Selection Committee is correct, it would appear to follow that the lists of selected candidates for such class of posts will have to be placed by the A.O. first before the D.S.B. before issuing order for the appointment of the candidates concerned under rule 63 of P.E. Rules. It is true that under Section 23 the appointments of such candidates shall have to be made in accordance with the directions given by the Staff Selection Committee so that the D.S.B. would seem to have no discretion to make any variations in the Select List, but technically such lists will have to be placed before the D.S.B. before issue of order. If this view represents the correct legal position, then any appointments which the A.O. might make

straightway of the candidates selected by the Staff Selection Committee might be held invalid if any D.S.B. Challenges such appointments".

The E. & I.D. considers that the D.P.I.'s interpretation of the provisions of sub-sect. (4) and (5) of sect. 23 and of rule 63 of the P.E. Rules is correct. The R.L.A. is requested to advise.

Seen and returned.

The view taken by the D.P.I. in para 4 of his letter at p. 1 ante is correct.

R.K. - 29/8.

Sd/- P.M. Lad,

R. L. A. 30/8.

U. R. to E. & I. D., No. 9976, dated 2/9/49.

EVY. 8/6.

Office of the R.L.A.

The question for R.L.A's consideration is whether for the purpose of payment of annual contribution by a Non-Authorised Municipality under section 41(2) of the Bombay Primary Education Act, 1947, Government can fix different proportions of rateable value of the properties in respect of each Non-Authorised Municipality.

2. Sub-section (2) of section 41 of the Bombay Primary Education Act, 1947, provides that every Non-Authorised Municipality shall pay over annually to the District School Board or the Authorised Municipality, as the case may be, for the purposes of primary education such proportion of the rateable value of the properties in the area of the Municipality as may, from time to time, be fixed in this behalf by the Provincial Government and the income accruing from any funds (including trust funds) held, and all moneys received by it for for the said purposes. The word "every", as Dr. Johnson tells us in his Dictionary, was formerly spelt "everich", that is, "ever each" and that the true meaning is "each one and all; the whole number and each separately considered; all those separate individuals which constitute the whole regarded one by one. It is true that it has sometimes been said, e.g. Smith's Dictionary of Synonyms, that "every" supposes uniformity in detail and excludes exceptions and differences. "Each" on the other hand implies this but, as the same source goes on to point out, this distinction is not so much in the force of the words as in the nature of the thing. "Every" qual-

ries Non-Authorized Municipality and the result of using that word, instead of the word "each" is that no exception can be made in respect of any Non-Authorized Municipality and that each and all liable to pay. But the word "every" has no connection with the proportion and the principle of that word not enabling and exception to be made would not apply to the proportion. The words used there are "such proportion of the rateable value of the properties in the area of the Municipality as may from time to time be fixed in this behalf by the Provincial Government". These words are wide enough to enable Government to fix a different proportion for each Municipality if they so desire. The expression "in this behalf" would not affect that power. It simply means "in this matter," and does not indicate the intention of fixing a rigid uniform proportion for all Non-Authorized Municipalities. On the other hand, the underlined word "the" may lend some support, if support be necessary, to the view that the section contemplates each Municipality separately for the purpose of fixing the proportion.

Sd/- P.M. LAD,
6/6
Remembrancer of Legal Affairs.

U. R. to E. & I.D., No. 6328 , dated the 7th June 1949.

Issued

C.S.P.
7/6.

EVY. 8/6.

L.D.R.I. No. 10600/49.

The question raised by the Chairman, Municipal School Board, Bandra, is whether an authorized municipality can continue to maintain extra staff which has not been sanctioned by Government nor admitted for Government grant and debit the cost thereof to the Primary Education Fund. The D.P.I. refers to the provisions in of rules 36, 158 and 160 of the P.E. Rules and to sect. 20 of the Bom. P.E. Act and states thus:-

"It would appear from the provisions of section 20 of the Bom. P.E. Act, 1947, that in the case of authorized municipalities it is obligatory for them to maintain an adequate staff of Asstt. Administrative officers, Supervisors etc. as may, in the opinion of Government be necessary. It seems that while an authorized Municipality is required to maintain such staff as Government may consider necessary, the sanction does not preclude an authorized municipality from maintaining extra staff. In the circumstances, unless it is held that expenditure not sanctioned by Government in the case of authorized municipalities on staff etc. cannot be debited to the P.E. Fund, there is hardly any need to issue instructions to the authorized municipalities on the lines suggested".

R.L.A is requested to advise whether the view taken by the D.P.I. is correct.

Seen and returned.

The view taken by the D.P.I. is correct.

Id/- 29/8.

I agree. A may be done.

U.R. to E.&I.D. R.K.K- 30/8. R.L.A. Sd.
V. 8/8. No. 9219, dt. 1.9.49.

Office of the R.L.A.

Confidential.

Paragraph 2 of sub-rule (2) of rules 36 of the Bombay Primary Education Rules, 1949, no doubt says that the municipal school board may with the sanction of the authorised municipality employ such temporary staff as may be required. However, both under section 21 as well as under section 17(1)(e) of the Bombay Primary Education Act, 1948 the Provincial Government is made the final judge of the necessity of the staff, and, therefore, the power given to the municipal school board by rule 36 will have to be exercised subject to such declaration of necessity as the Provincial Government may make. Although it may not be possible to issue a direction of the kind contemplated by section 54 of the Act, Government has authority to make a declaration of their view of the necessity of the staff; and the municipal school board will, under the law, be bound to conform to such declaration.

Sd/- P.M. LAD,
24/9
Remembrancer of Legal Affairs.

U.R° to E. & I. D., No. 616-Confl, dated the 24th September 1949.

Issued
E.E.E.
Id/- 24/9.

EVE. 8/6.

The facts are stated in the E. & I.Dept. Office note.

The only course open to an aggrieved party would be to seek redress in a court of law by making an application to the District Judge Chahh-enging the validity of the election under Sect. 6(1) of the Bom. Primary Education Act, 1947. From the note of the Assistant Secretary E.I. Dept. it appears that even that ~~realy~~ remedy will be time barred if no such application is ~~serve~~ made on or before 6-8-49. However, an aggrieved party can seek relief by ~~rietituting~~ instituting a regular suit. Government has no power to unseat a person declard duly elected. The new view taken by E. & I. Department is correct, and the papers may be seen and returned. "

Id/- 6/8.

A.L.R. A may be done.

R.K.- 8/8.

Sd/- P.M.LAD,

R.L.A.

U. R. to E. & I.D., No. 509-Confl, dated 10/8/49.

EVY. 8/6.

Office of the R.L.A.

Section 23 of the Bombay Primary Education Act, 1947, provides for the setting up of a Staff Selection Committee for every District School Board or authorised municipality. The Staff Selection Committee shall consist of the Educational Inspector of the Division or any other officer designated by the Director, the Chairman of the School Board and the Administrative Officer, the last named officer being the Secretary of the Committee. In addition to the Committee's duty of selecting candidates for appointment the Committee is also required to select teacher to be deputed for training, and the selection is to be made in accordance with instructions issued by the Provincial Government. The intention of section 23 was not to confine the selection only to such training as would bring additional benefit in pay etc. to the primary teachers but to ensure that the proper type of person was selected for training in the best interest of education. The word "training" has not been defined in the Act and must, therefore, be given its ordinary natural meaning, which is as follows: "bringing a person to a desired state or standard of efficiency by instruction and practice; making him fit by study, exercise and proper guidance. "Training" so construed would include all courses of training meant for a teacher and need not, therefore be confined only to what is called the regular one or two years' courses at the Primary Training College. It is no doubt true that the expression "trained teacher" as defined in clause (k) of rule 2

of the Bombay Primary Education Rules means a teacher who holds a certificate of training; and it may be that sub-rule (4) of rule 37 may have that particular training in view. Chapter 9 of the Rules, however, makes provision for organising training courses in physical education and for guiding craft teachers etc. The Rules, therefore, do not confine themselves to only one kind of training, and in any case the Rules cannot control the provisions of the Act. Having regard to the intention of the provisions, the work of selecting teachers for trainging other than the regular one or two years' courses at the Primary Training College cannot be delegated to the Administrative Officer but must be done by the Staff Selection Committee.

2. The answer to the first question is, therefore, in the affirmative and to the second in the negative.

Sd/- P.M.LAD,
15/11
Remembrancer of Legal Affairs.

U. R. to E.D., No. 10506, dated the 16th September 1949.

Issued
C.SPP
16/9.

EVY. 8/6.

Office of the R.L.A.

Bombay Primary Education Act, 1923.

As the matter pertains to the Education Department the papers are transferred to that Department for disposal with the following remarks

So far as the legal position is concerned under sub-sec. (1) of sect. 8 of the Bombay P.E. Act, 1923 it was obligatory upon the local authority to take over and employ such primary School Teachers employed under the Educational Department of the Provincial Government as the Provincial Government may direct, on the same terms and conditions on which such persons were employed under the said Department. Under Sub-sect. (2) the existing and future rights duties and powers of the Bombay Government in respect of such teachers (that is, teachers employed under the Education Department but taken over by the local authority) shall vest in and be exercised or performed by the local authority. Proviso (b), however, provides that the scales of pay and allowances applicable to such teachers at the time when they were taken over and employed by the local authority shall not be altered without the sanction of the Provincial Government, and the Provincial Government may, in such cases as they think fit, direct that such alterations shall take effect from any date prior to that on which such sanction is given. Sub-sect. (4) provides that the provisions of this section shall not apply to all Primary School Teachers employed under the Provincial Government on or before 1-7-1923 or on or before the date prescribed

under Sect. 4(1), whichever is later. From the provisions of sub-sects (1) and (2) of Sect. 8 of the Bombay P.E. Act, 1923, it is amply clear that the primary teachers employed by the Education Department of the Provincial Government and who were taken over by the local authorities under Sect. 8(1), ceased to be Government Servants (see R.L.A's opinion No. 2285 dt. 1-10-1926). It was in pursuance of the specific provision contained in rule 5(2) of the P.E. Rules that provision was made by the local authority for payment of pensions of all primary school teachers taken over and employed by it under Sect. 8(1) of the Act, from the date of such taking over and employment. It provided that provision for the payment of such pensions shall be made (i) either by payment to Government of pension contribution, or (ii) by establishment of a pension fund. It is thus clear that provision for payment of pension had to be made by the local authority, and not by Government. Thus legally, all the primary teachers under the Education Department taken over and employed by the local authority ceased to be Government Servants although their rights were guaranteed and there is no substance in the contention of the Association.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U. N. to E. & I. D., No. 15044, dated the 24th December 1949.

Submitted for signature.

Meshal 23/12. A.A.S Id/- 23/12. A.L.R R.K. 23/12
EVY. 8/6.-